

WELSA HEIRSHIP DETERMINATION : Order Affirming Decision
OF RICHARD C. BEAUPRE :
: Docket No. IBIA 93-89-W
:
: January 19, 1994

This is an appeal from an April 30, 1993, order determining heirs and an April 30, 1993, order disallowing objections issued by Administrative Judge Sandra L. Massetto in the heirship determination of Richard C. Beaupre (decedent) under the White Earth Reservation Land Settlement Act (WELSA), 25 U.S.C. § 331 note (1988).

Section 9 of WELSA directs the Secretary of the Interior to determine the heirs of certain White Earth Chippewa Indians. Sec. 3(l) provides:

"Heir" means a person who received or was entitled to receive an allotment or interest as a result of testate or intestate succession under applicable Federal or Minnesota law, or one who is determined under section 9, by the application of the inheritance laws of Minnesota in effect on March 26, 1986 * * *, to be entitled to receive compensation.

Appellant Mabel Shangreau contends that Judge Massetto erred in failing to address the constitutionality of a Minnesota law applied in this case, i.e., Minn. Stat. § 525.172 (repealed by Act of May 29, 1985, 1985 Minn. Laws 851). Appellant seeks to avoid application of this provision because, under it, her now-deceased son, Charles Beaupre, was found not to be an heir of decedent. 1/

Before Judge Massetto, appellant contended that Minn. Stat. § 525.172 discriminates against illegitimate children and is therefore unconstitutional. The Judge, citing Estate of Florence Bluesky Vessel, 1 IBIA 312, 79 I.D. 615 (1972), found that she did not have the authority to declare a state statute unconstitutional. Appellant urges the Board to address her constitutional challenge to the Minnesota statute. She contends, inter alia, that the Board decision relied upon by Judge Massetto was reversed in Eskra v. Morton, 524 F.2d 9 (7th Cir. 1975).

1/ Minn. Stat. § 525.172 precludes inheritance by an illegitimate child from the kindred of the child's father. Appellant was not married to Charles Roy Beaupre, who was decedent's son and the father of Richard Charles Beaupre. Charles Roy died on Mar. 12, 1976. Decedent died on Aug. 1, 1986.

It is true that the state statute at issue in Vessell was found unconstitutional in Eskra. But the Court of Appeals did not hold that the Board had authority to declare the statute unconstitutional. Indeed, the Federal courts have traditionally recognized that administrative agencies lack such authority. E.g., Johnson v. Robison, 415 U.S. 361, 368 (1974); Oestereich v. Selective Service Board, 393 U.S. 233, 242 (1968); Public Utilities Commission v. United States, 355 U.S. 534, 539 (1958). In a number of decisions subsequent to Vessell, the Board has reaffirmed its holding there--that it lacks the authority to declare a statute unconstitutional. E.g., Reindeer Herders Association v. Juneau Area Director, 23 IBIA 28, 48; 99 I.D. 219, 229 (1992); Redleaf v. Muskogee Area Director, 18 IBIA 268 (1990), and cases cited therein. It is apparent that appellant must make her constitutional challenge in Federal court.

Appellant argues that, if the Board declines to address her constitutional argument,

it is incumbent on the Department to fully articulate the interests which are served by relying on Minn. Stat. § 525.172 in the WELSA heirship determination process. Even if the Department maintains its position that it will not rule on the constitutionality of Minn. Stat. § 525.172, it is still possible for the Department to carefully consider and set forth the reasons why it supports WELSA's incorporation of this discriminatory state law, and the justification for this use of birth status discrimination. This would allow the court to more confidently make the constitutional determination the Department refuses to do.

(Appellant's Statement of Reasons at 4-5). In her reply brief, appellant indicates that it is the Board which she expects to "articulate" these matters. See Appellant's Reply Brief at 7-8: "A]ppellant has requested that the Board articulate the interests that are furthered by use of Minn. Stat. § 525.172 in the WELSA heirship determination process." Clearly, however, if the Board lacks jurisdiction over the constitutionality question, it also lacks jurisdiction to make the findings requested by appellant. In any event, it is not necessary for the Board to venture into an area in which it lacks jurisdiction in order to assist the Federal courts. The Board has no doubt that, should appellant pursue this matter in Federal court, the Federal Government's position as to the constitutionality of the Minnesota statute will be fully articulated to the court.

Appellant made another argument before Judge Massetto. She contended that there were actually two relevant Minnesota laws in effect on March 26, 1986, the date specified in WELSA, and that the Judge could have chosen to apply the newer statute, which allows illegitimate children to inherit from the kindred of their fathers. Judge Massetto found that the newer provision, Minn. Stat. § 524.2-109, although enacted in 1985, had a delayed effective date--i.e., it was effective only as to decedents dying after

December 31, 1986--and was therefore not in effect on March 26, 1986. She further found that the repeal of Minn. Stat. § 525.172 was subject to the same delayed effective date. Appellant does not challenge these findings before the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Massetto's April 30, 1993, orders are affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge